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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 761.

WILLIAM MAHONEY, as Liquor Control Commissioner of the State of Minnesota, et al.,

Appellants,

v.

JOSEPH TRINER CORPORATION,

Appellee.

BRIEF OF THE STATE OF INDIANA AS AMICUS CURIAE.

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BRIEF OF THE STATE OF INDIANA AS AMICUS CURIAE.

Omer S. Jackson, Attorney-General of Indiana, for and on behalf of the State of Indiana, as amicus curiae herein, submits to the Court the following considerations relative to the constitutional questions involved in this case:

I.

The Interest of the State of Indiana in the Legal Doctrines Which May Be Enunciated by the Court in Deciding the Pending Cause.

The instant case involves the validity of Chapter 390 of the Laws of Minnesota, which provides:

> "No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors con-

taining more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the Patent Office of the United States."

The statutory three-judge court from whose decision this appeal has been taken by the State Liquor Control Commissioner of the State of Minnesota held that such statute has no reasonable relation to the regulation or control of the liquor traffic within the State of Minnesota; that the Twenty-first Amendment to the United States Constitution has not freed the states from all restrictions upon their police power which are to be found in such Constitution; that such statute violates the equal protection clause, and that it is therefore invalid.

While the State of Indiana does not have any enactment similar to the Minnesota statute here involved, nevertheless, since the validity of such statute hinges upon the interpretation to be given to the second section of the Twenty-first Amendment, the State of Indiana is gravely concerned therein because of certain retaliatory liquor legislation which has been passed by the States of Michigan and Missouri directly affecting exports of beer manufactured in Indiana into such states. By way of explanation, the State of Indiana in 1935 enacted a law requiring licensed wholesalers of Indiana desiring to also engage in the importation of beer into such state from other states to obtain a "port of entry" license from the State of Indiana at a cost of $1,500.00 per year, and limiting the number of such port of entry licenses to one hundred. The States of Michigan and Missouri, feeling that laws of this character might have a harmful effect on the export business which their respective manufacturers of beer might otherwise be able to establish in the State of Indiana and

certain other states having laws of similar character, enacted certain retaliatory statutes to prohibit the distribution, possession or sale of any beer manufactured in the State of Indiana or in such other states having similar statutory provisions. A more detailed statement of the provisions of the Michigan and Missouri statutes will be found in paragraph IV and Exhibit A of this brief. The validity of both of these statutes is involved in pending litigation which will shortly come before this tribunal.

While the State of Indiana fully realizes that the validity of the Michigan and Missouri statutes is not, and cannot, be involved in this appeal, nevertheless it confidently believes that this Court may welcome its views as amicus curiae in the instant case, in order that the Court may be thereby assisted in understanding more clearly and from all angles the situation as a whole, as well as the perplexing questions which are confronting not only the State of Indiana, but its various sister states in their control of the liquor traffic and their relations with each other.

Consequently, while the factual situation under the Minnesota statute and that obtaining under the Michigan and Missouri statutes have little, if anything, in common, a determination of the extent to which the provisions of the Twenty-first Amendment free a state from the operation of the Commerce Clause and the Fourteenth Amendment is pertinent in considering the validity of both types of legislation.

II.

The Purpose of the Brief of Amicus Curiae.

The enactment of these statutes in the States of Michigan and Missouri, if proper under the Twenty-First Amendment, has created a serious question of policy for the State of Indiana. It must either see its breweries lose

large markets for their products within such states, or it must surrender its sovereign power as a state and suffer itself to be coerced into repealing certain purely police regulations which have heretofore been found successful in minimizing certain evils of the liquor traffic within its borders. Therefore, the State of Indiana desires to ascertain, before the time arrives for it to make alterations in its laws at the regular session of the next General Assembly, which convenes early in January, 1939, whether such retaliatory type of laws is constitutional under the Commerce Clause and the Fourteenth Amendment considered in connection with the second section of the Twenty-first Amendment. These precise questions, your amicus curiae is advised, will be presented in the near future to this Court in cases arising under both the Michigan and Missouri statutes.

III.

Cases Which Have Arisen Under the Michigan and Missouri Acts.

Indianapolis Brewing Co., Inc., Plaintiff, v. The Liquor Control Commission of the State of Michigan et al., in equity, No. 8259, U. S. District Court, Eastern District of Michigan, Southern Division (three judges), 21 Fed. Supp. 969 (current advance sheets March 21).

Joseph Finch & Co. v. Roy McKittrick et al., In Equity, No. 668 (not reported).

IV.

Statutory Provisions of Michigan and Missouri Which Are Involved.

Section 40 of Act No. 8 of the Public Acts of the State of Michigan, Extra Session 1933, as amended by Act No. 281 of the Public Acts of Michigan, regular session 1937.

Section 4, Laws of Missouri 1937, p. 536.

For the convenience of the Court the pertinent provisions of the Missouri law are set out in Appendix A.

The pertinent provisions of the Michigan Act being fewer in number, although of the same general nature as the Missouri Act, are now substantially set out.

Amended Section 40 of the Michigan Act cited above provides:

> "The commission shall forthwith adopt a regulation designating the states, the laws, or the rules or regulations of which are found to require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; or which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; or which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in this state, unless the one from whom purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein; or which impose any higher taxes or inspection fees upon beer manufactured in this state when transporting into or sold therein, than is imposed upon beer manufactured and sold within said state, the regulation adopted shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state therein designated, said regulation to become effective ninety days after its adoption. Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the commission has acted illegally or in excess of authority in making its finding with respect to any state."

The foregoing provisions of amended section 40 disclose that Michigan has prescribed four so-called grounds for exclusion, and that the importation, possession and sale within Michigan, of beer produced in any sister state, depends entirely upon whether any of the laws or regulations of the latter state fall within one or more of such four classifications, regardless of whether the offending provisions are found necessary by such state for the proper control of the traffic within its borders.

On December 14, 1937, the Liquor Control Commission of Michigan adopted a regulation designating the State of Indiana as having in full force and effect a statute containing some or all of the obnoxious provisions. Subsequently the Liquor Control Commission of that state deferred the effective date of the regulation until the early part of the year 1939. It is the validity of this regulation and of amended section 40 that is involved in the case of Indianapolis Brewing Co., Inc., plaintiff, v. The Liquor Control Commission of the State of Michigan et al., referred to in paragraph III of this brief.

V.

The Bearing of the Present Case Upon the Problems Presently Arising for the Consideration of This Court Under the Retaliatory Type of Statute.

Should the present case be decided upon the ground that the provisions of the Minnesota statute involved in this appeal have a reasonable relation to the control of the liquor traffic within the State of Minnesota, such decision would imply that the dispensation accorded by the Twenty-first Amendment to the states from the operation of the Commerce Clause and the Fourteenth Amendment does not avail where the state statute involved has no reason-

able relation to the control of the liquor traffic within its borders or is not reasonably adapted to achieve such purpose. In other words, such holding would be within the decision of the Court in the Young's Market Case which upheld the statute of the State of California imposing a different license fee upon wholesalers importing foreign beer than was imposed upon the wholesalers of domestic beer because there was a reasonable ground for differentiation. The latter holding also implied that the Twenty-first Amendment was coextensive in its operation with the purpose which brought this amendment into being, namely, to enable the state properly to regulate or prohibit the alcoholic traffic to the extent required for police purposes, without being hampered in so doing by the Commerce Clause.

Likewise, if the Court should decide that there was no such reasonable relation between this legislation of Minnesota and the control or policing of the liquor traffic therein and that the same must therefore fall, this Court would be recognizing the same principle of construction of the Twenty-first Amendment.

However, if this Court were to construe the Twenty-first Amendment as upholding any species of state legislation, enacted with due formalities, however unrelated to the accomplishment of the suppression of the evils of the alcoholic traffic within its borders, the effect of such a holding would be to supply constitutional warrant for the retaliatory type of legislation such as has been enacted in Michigan and Missouri.

VI.

The Retaliatory Type of Legislation as a Serious Threat to the Integrity of the Twenty-first Amendment Itself.

Of course, before the enactment of the Wilson Act and the Webb-Kenyon Act, the Fourteenth Amendment and the Commerce Clause of the Constitution enabled the out-of-state dealers in alcoholic liquors under the protection of these constitutional provisions to ship goods into a prohibition state and thus break down the domestic policy of a state in its efforts to control the alcoholic traffic within its borders. Leisy v. Harden, 135 U. S. 100, 109 (1889). The classic purpose of the Webb-Kenyon Act, as stated by Chief Justice White in Clark Distilling Co. v. Western Maryland Railway Co., 242 U. S. 311, 324 (1917), was "to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in states contrary to their laws and thus, in effect, afford a means of subterfuge and indirection to set such laws at naught."

It has commonly been accepted that the Twenty-first Amendment, following closely the language of the Webb-Kenyon Act, was intended to incorporate the policy of the Webb-Kenyon Act into the Constitution. In fact, such was expressly declared to be its purpose in the congressional discussion occurring during the formulation of the amendment. Senator Borah, speaking of conditions arising from the inability of the states to exercise their police powers upon interstate commerce, in his discussion of this amendment on the floor of the Senate (Vol. 76, Congressional Record, page 4172), said:

"All this was sought to be remedied by the Webb-

> Kenyon Act, and I am very glad indeed the able Senator from Arkansas has seen fit to recognize the justice and fairness to the states of incorporating it permanently in the Constitution of the United States."

However, the so-called retaliatory laws, such as are instanced in this brief as having been enacted in the States of Michigan and Missouri, do not have the same purpose or object as the state laws which the Webb-Kenyon Act was enacted to support. For instance, the opinion of the three-judge District Court in Indianapolis Brewing Co., Inc., v. the Liquor Control Commission of the State of Michigan, 21 Fed. Supp. 969, does not profess to hold that amended Section 40 of the Michigan Act No. 8 (A. D. 1937), containing the so-called standards of exclusion based upon the provisions of the Indiana laws, has, as its object, the policing of the alcoholic traffic within the State of Michigan, although police powers, from their very nature, must be restricted in their operation to the territorial jurisdiction of the state exercising them.

On the contrary, this opinion of the three-judge District Court bottoms the validity of the Michigan statute upon the power of the State of Michigan to enact legislation designed for one purpose only, namely, to promote the sale and distribution of beer made in Michigan throughout the other states of the Union by constraining the Legislatures of such states to remove any police regulations of such states which apply different methods of treatment of foreign beer as compared to domestic beer, and holds that since such legislation would tend to promote the development of the beer industry within the State of Michigan, it is related to the promotion of the prosperity of the people of Michigan and therefore within the police power of a state and, consequently, within the

protection accorded to its laws under the Twenty-first Amendment as against the operation of the Commerce Clause and the Fourteenth Amendment. The view of the Twenty-first Amendment which is implied in this holding of the three-judge court in Michigan contemplates that the dispensation accorded by the amendment to the several states may be employed to promote the growth and development of the alcoholic industry within such states by extending the market for their alcoholic industries throughout the whole United States. Under this view the amendment becomes not a shield, designed to protect a state from interference in the administration of its domestic policy, but a sword to advance the commercial interests of the liquor industry domiciled within the state.

But this view belies the object of the Webb-Kenyon Act and of the second section of the Twenty-first Amendment, which incorporated the policy of the Webb-Kenyon Act in the Constitution of the United States. That which is not within the policy of the Twenty-first Amendment can scarcely be regarded as within its terms. The second section of the Twenty-first Amendment attempted to perpetuate the advantages of the Webb-Kenyon Act. The Webb-Kenyon Act was enacted in a period of increasing restraint and regulation of the liquor traffic and it would be an anachronism to represent that statute as being intended to enable a state to promote the growth and development of the business of its manufacturers of alcohol throughout the other states of the country. These retaliatory laws, in fact, are diametrically opposed to the *raison d'etre* of the Twenty-first Amendment. This is patently revealed by the published propaganda of the supporters of the retaliatory type of legislation. We quote from an article in Brewery Age (Feb. Number, 1938, p. 8):

"States which have discriminatory laws then will

> have but two alternatives; either to remove all discriminations or to have highly important outstate markets closed to them. They will, we are confident, take the former course, with the net result that ultimately beer will enjoy the same freedom in interstate commerce afforded to all other legitimate articles of commerce, a status that is to be highly desired for the good of the brewing industry as a whole."

The purpose of the Webb-Kenyon Act and of the second section of the Twenty-first Amendment was not "that ultimately beer will enjoy the same freedom in interstate commerce afforded all other legitimate articles of commerce." On the contrary, the purpose of this provision of the Twenty-first Amendment was to prevent beer from flowing freely in interstate commerce to the extent that proper police legislation of the several states might under the protection of the amendment interfere therewith.

Can an interpretation of the second section of the Twenty-first Amendment be regarded as sound which will lead to the defeat of the purpose of the amendment?

VII.

Considerations Affecting the Construction of the Twenty-first Amendment.

Those who urge the view that the Twenty-first Amendment supports economic barriers, designed through retaliation to promote the sale of the beer manufactured in the enacting state throughout the other states of the Union base their position upon a literal construction of the second section of the Twenty-first Amendment and upon certain general language in Board of Equalization v. Young's Market Co., 299 U. S. 59.

A merely literal interpretation of a constitutional provision has been many times refused by this Court.

In Bain Peanut Co. v. Pinson, 282 U. S. 499, 501 (75 Law. ed. 482, 491 [1930], Mr. Justice Holmes, speaking for the majority of the Court, said:

> "The interpretation of constitutional principles must not be too literal."

He also said, speaking for a majority of the Court, in Gompers v. United States, 233 U. S. 604, 609 (58 Law. ed. 1115, 1120 [1913]):

> "But the provisions of the constitution are not mathematical formulas having their essence in form; they are organic, living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words in a dictionary, but by considering their origin and the line of their growth."

In United States v. Lefkowitz, 285 U. S. 452, 467 (76 Law. ed. 877, 883 [1913]), Mr. Justice Butler, speaking for a majority of the Court, said:

> "And this Court has always construed the provisions of the Constitution having regard to the principles upon which it was established. The direct operation or literal meaning of the words used do not measure the purpose or scope of its provisions."

In Eisner v. Macomber, 252 U. S. 189, 205, 206 (1919), this Court had occasion to construe the Sixteenth Amendment of the Constitution authorizing a federal income tax from the standpoint of the taxability of a stock dividend; and in that connection to consider the bearing upon the new amendment of certain pre-existing provisions in the

Constitution requiring apportionment according to population for direct taxes upon real or personal property. The Court there said:

> "A proper regard for its genesis, as well as its very clear language, requires also that this Amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal."

The more recent case of Evans v. Gore, 254 U. S. 245, 259 (1920), is a clear instance of the discriminating construction applied by this Court to the new amendment from the standpoint of its relation to pre-existing provisions of the Constitution, and Mr. Justice Van Devanter, speaking for the Court, said:

> "Preliminarily we observe that, unless there be some real conflict between the Sixteenth Amendment and the prohibition in Article III, Sec. 1, making the compensation of the judges undiminishable, effect must be given to the latter as well as to the former; and also that a purpose to depart from or imperil a constitutional principle so widely esteemed and so vital to our system of government as the independence of the judiciary is not lightly to be assumed."

In Marbury v. Madison, 1 Cranch. 137 (2 Law. ed. 60); this Court declared:

> "A construction which raises a conflict between parts of the constitution is inadmissible when by any reasonable interpretation they may be made to harmonize."

In Fiske v. State of Missouri (1933), 62 Fed. (2d) 150, 154 (C. C. A. 8th), the Court said:

> "The Amendment does not stand alone, and no construction of its meaning based upon such hypothesis can be sound. It is only a part of the Constitution, and must be construed as such. Like all instruments, the Constitution is subject to the rational rule of construction that the parts must be understood in relation to each other and to the entirety in order to preserve the fullest vitality of the whole instrument in all of its parts. 'It cannot be presumed that any clause in the Constitution is intended to be without effect * * * unless the words require it.' Marbury v. Madison, 1 Cranch. 137, 174, 2 L. Ed. 60; Prout v. Starr, 188 U. S. 537, 543, 23 S. Ct. 398, 47 L. Ed. 584. Therefore, when some particular clause, in its bare wording, seems to destroy or limit or qualify some other clause, it is the office of the Court to examine the involved parts in the light of the entire instrument with a view to preserving such extent of each as can harmoniously live together. Such rule has been applied to this Amendment."

In re Opinion of the Justices (Mass. 1933), 197 N. E. 99, the Court said:

> "Articles 48 and 64 of the Amendments are equally parts of the Constitution. They stand on the same footing. They are to be construed and interpreted in combination with each other and all other parts of the Constitution as forming a single harmonious instrument for the government of the Commonwealth. Tax Commissioner v. Putnam, 227 Mass. 522, 524, 116 N. E. 904, L. R. A. 1917 F, 806; Opinion of the Justices (Mass.), 196 N. E. 260."

Taking into consideration that the patent object of re-

taliatory legislation is to constrain a sister state to forego a part of its constitutional liberty to enact purely police regulations, incidentally discriminating against the products of a foreign state, though not of a retaliatory type, in order to avoid the loss of the foreign markets of beer produced within the state, it is well to view the second section of the Twenty-first Amendment from the standpoint of its effect upon the relationship between the sovereign states constituting the Union. In this connection the following language becomes pertinent:

> "To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the republic was organized. When that equality disappears we may remain a free people, but the union will not be the union of the Constitution."
>
> Coyle v. Smith, 221 U. S. 559, 567, 580 (55 L. Ed. 853, 858, 863) (1910).

Undoubtedly the Commerce Clause was intended to prevent retaliation by one state against the products of another moving in interstate commerce. This clause, of course, was adopted not only to secure the freedom of interstate commerce, but to preserve harmonious relations among the states. The second section of the Twenty-first Amendment was undoubtedly enacted, as indicated above, to enable a state to preserve its jurisdiction intact in respect to the regulation or the prohibition of liquor traffic within its borders. The objects of both these constitutional provisions are still public desiderata. The people of the United States are entitled to enjoy the benefits of both of these constitutional provisions. These provisions are susceptible of harmonious construction. Any apparent conflict may be reconciled so as to carry out all

of these objects. They may be reconciled along the lines of a formula which on the one hand will uphold the policing regulations of a state, though incidentally discriminating against the alcoholic products of other states, provided always the true object of such regulations reasonably appertains to the control of the traffic, but, on the other hand, will denounce legislation if the true object thereof is retaliation and not the policing of the domestic traffic.

Support is claimed for the retaliatory type of legislation on account of certain general language used by this Court in the introductory portion of its opinion in State Board of Equalization v. Young's Market Co., 299 U. S. 59, 62 (81 Law. Ed. 38, 41) (1936), where Mr. Justice Brandeis, speaking for the Court, said:

> "The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes."

It is urged that a state may lay down any kind of a condition whatsoever as a prerequisite to the importation of out-of-state beer into its borders, however retaliatory such provisions may be and however unrelated to any object within the police power.

This interpretation of the Court's decision, however, seems to ignore the subsequent language and reasoning in this opinion. The Court said at page 64:

> "The plaintiffs insist that to sustain the exaction of the importer's license fee would involve a declaration that the Amendment has in respect to liquor freed the States from all restrictions upon the police power to

be found in other provisions of the Constitution. The question for decision requires no such generalization."

It appears from this language that this Court distinctly refused to hold that the Twenty-first Amendment freed the states from restrictions of the police power to be found in other provisions of the Constitution. The latter view is borne out by subsequent portions of the opinion. For the Court said on the same page:

> "Moreover the classifications in taxation made by California rests on conditions requiring different treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license fee for the privilege of manufacturing it; and under the California statute is obliged to pay $750 a year. Compare Brown-Foreman Co. v. Kentucky, 217 U. S. 563 (54 L. Ed. 883). The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license fee of $500."

The Court was careful to ground the validity of the discriminating treatment of the importer of foreign beer as compared with the brewer of the domestic product upon the actualities of the situation and the necessity arising out of the situation for a different method of control. Earlier in the opinion (p. 63) the Court had spoken of the undoubted right of the State to "channelize desired importations by confining them to a single consignee." Separate channelization of the streams of imported and domestic beer is the substance of the provisions of the Indiana Law of which Michigan complains and which fall within the standards of exclusion provided in amended Section 40 of the Michigan Act. The Michigan Act in

effect declares that if Indiana avails itself of its constitutional right to channelize separately foreign and domestic beer it may do so only at the cost of retaliation against the manufacturer of Indiana beer.

A fair reading of the opinion in the Young's Market Co. case lends no support to the construction of the second section of the Twenty-first Amendment insisted upon by the authors of the Michigan and Missouri legislation, but, on the contrary, this opinion tends strongly to support the view that the Court was not intending to uphold the merely retaliatory type of legislation against foreign importations.

Conclusion.

Counsel for the State of Indiana sincerely believe that the considerations urged above will enable this Court to apprehend more clearly the present status of legislation throughout the country which will presently come before this Court for review and will enable this Court to appreciate more thoroughly and sympathetically the difficult and delicate problems confronting the several states in dealing with the ever-present problems of the liquor traffic in so far as the second section of the Twenty-first Amendment has a bearing thereon.

In closing, we suggest that it appears quite feasible to draw the line of demarcation along boundaries which will, on the one hand, leave the states perfectly free to deal with their domestic problems of liquor control without interference by other states, and, on the other hand, will not permit undue interference with interstate commerce by upholding retaliatory legislation designed to thwart

and not to secure the beneficent objects of the second section of the Twenty-first Amendment.

Respectfully submitted,

STATE OF INDIANA,

By: OMER S. JACKSON,
Attorney-General of Indiana,

A. J. STEVENSON,
First Assistant Attorney-General
of Indiana,
Counsel for Amicus Curiae.

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EXHIBIT A.

PERTINENT PORTIONS OF MISSOURI STATUTE.

(Section 1, Subsection 7 and Subsection 8; Section 4, Laws of Missouri 1937, p. 536.)

"(7) The phrase 'discriminatory laws' means the laws of any state, or the rules or regulations of any administrative officer, commission or body thereof, which

(a) impose any tax, impost, or license fee upon the right to transport or import into such state any alcoholic liquor manufactured in this state; or

(b) prohibit the importation, transportation, or sale of any alcoholic liquor manufactured in this State unless the manufacturer obtains a license or pays a tax or fee when such manufacturer neither imports nor transports such liquor into said state nor sells the same therein; or

(c) prohibit or restrict any licensee in said state from purchasing, or from importing or transporting into said state, alcoholic liquor for the purpose of sale at wholesale therein from any manufacturer or wholesaler in this state, if such licensee may lawfully purchase the same kind of alcoholic liquor for the purpose of resale at wholesale therein from a manufacturer in said state without such restrictions or prohibition; or

(d) impose any different warehousing requirements or higher warehousing fees or inspection fees upon any alcoholic liquor manufactured in this State and imported or transported into such state than is imposed upon the same kind of alcoholic liquor manufactured in such state; or

(e) prohibit any manufacturer or wholesaler in this State or the agents or representatives of either from exercising the privilege of soliciting orders for the sale of alcoholic liquor manufactured in this State to any licensed wholesaler in said State, if the sale is to be made outside thereof, or to any retailer if such orders are to be filled therein by or through a licensed wholesaler in said State, if licensed manufacturers or wholesalers of the same kind of alcoholic liquor in said State or the agents or representatives of either are authorized to solicit orders for the sale of such alcoholic liquor manufactured in said State to licensed wholesalers or retailers; or requires manufacturers or wholesalers in this State, or the agents or representatives of either, to secure a license or pay a fee for said privilege, if no additional license or further fee is required of licensed manufacturers or wholesalers in said State for the privilege of soliciting orders from wholesalers or retailers; or impose upon a manufacturer or wholesaler in this State, or upon the agents or representatives of either, a higher fee for the privilege of soliciting orders for the sale of alcoholic liquors manufactured in this State than is imposed upon any person therein for the sole privilege of soliciting orders for the sale of the same kind of alcoholic liquor manufactured in said state; or

(f) impose any higher fees or taxes upon alcoholic liquor manufactured in this state when imported, transported, or sold therein than is imposed upon the same kind of alcoholic liquor manufactured and sold within said state; or

(g) impose any higher fee for the privilege of selling or handling any alcoholic liquor manufactured in this state than is imposed for the privilege of handling or selling

the same kind of alcoholic liquor manufactured within said state; or

(h) impose any prohibition against or limitations, restrictions, or condition, upon the purchase, sale, or solicitation of orders for the sale of alcoholic liquor manufactured within this state, or upon any person purchasing, soliciting orders for the sale, or selling the same that is not imposed upon the same kind of alcoholic liquor manufactured within such state, or upon persons purchasing, selling, or soliciting orders for the sale of the same; or

(i) impose, directly or indirectly, any other prohibition, restrictions, or condition, upon the receipt, possession, disposition, or transportation of alcoholic liquor manufactured in this state, which is not equally imposed upon the same kind of alcoholic liquor manufactured in said state, and in such manner as to place the alcoholic liquor manufactured in this state at a disadvantage in competition therein with the same kind of alcoholic liquor manufactured in said state. Provided, however, that the phrase "discriminatory laws," as above defined, shall not be deemed to include any requirement by law, rule or regulation of any state for (1) the furnishing of a bond by an importer or person first in possession of alcoholic liquor within such state, if the bond as required does not exceed the sum of $5,000 or in any event the amount of the bond required of any licensed manufacturer of the same kind of alcoholic liquor within such state, or (2) the making of reports as to the kind and quantity of liquor received or sold by such person, or (3) the obtaining of a separate license authorizing only importation if no fee is required to be paid therefor, and if such license may be obtained by any person authorized to sell at wholesale, upon application therefor; and provided, further, that in order to

secure said importer's license it shall not be required of any corporation applying therefor that any percentage of its stockholders or directors or officers be citizens or residents of said state; or (4) the limiting of the right to import or transport into said state to those who are duly licensed to sell such liquors at wholesale."

"(8) The phrase 'state in which discrimination exists' means any state of the United States as to which the Attorney-General finds and certifies, as herein provided, that discriminatory laws exist, and so long as the certificate remains effective any state so certified by him shall be a 'state in which discrimination exists.'"

"Section 4. The transportation or importation into this state, or the purchase, sale, receipt, or possession herein, by any licensee, of any alcoholic liquor manufactured in a state in which discrimination exists is hereby prohibited, and it shall be unlawful for any licensee to transport or import into this state, or to purchase, receive, possess, or sell in this state, any alcoholic liquor manufactured in any state in which discrimination exists as herein defined. Provided, however, that

(a) As to alcoholic liquor manufactured in any state as to which the Attorney-General certifies that discriminatory laws exist, where no appeal is taken from his finding, the prohibition of this section shall become effective forty-five (45) days after the publication of the notice provided in Section 2 hereof;

(b) As to alcoholic liquor manufactured in any state as to which the Attorney-General certifies that discriminatory laws exist and an appeal is taken from his finding, the prohibition of this section shall become effective thirty (30) days after the order or judgment of the court or judge, if such finding is affirmed."

SUPREME COURT OF THE UNITED STATES.

No. 761.—October Term, 1937.

William Mahoney, Liquor Control Commissioner, Appellant, *vs.* Joseph Triner Corporation.	On Appeal from the District Court of the United States for the District of Minnesota.

[May 23, 1938.]

Mr. Justice Brandeis delivered the opinion of the Court.

Section 2 of the Twenty-first Amendment to the Federal Constitution provides:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The adoption of the Amendment was proclaimed December 5, 1933. In February, 1934, Joseph Triner Corporation, an Illinois corporation engaged there in the manufacture of intoxicating liquors, complied with the Minnesota foreign corporations law; secured from the Liquor Control Commissioner a license to sell such liquors within Minnesota at wholesale; and thereafter carried on in that State the business of selling to retailers liquors manufactured by it in Illinois. The Legislature of Minnesota enacted Chapter 390, approved April 29, 1935, which provides:

"No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing more than 25 percent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States."

The business of Joseph Triner Corporation in Minnesota included selling many brands of liquors containing more than 25 per cent. of alcohol which had not been registered in the Patent Office; and at the time of the enactment of the statute it had there a stock of such liquors. To enjoin the Liquor Control Commissioner of Minnesota from interfering with the business, it brought this suit in the

federal court for that State; alleged that the statute of 1935 violated the equal protection clause of the Fourteenth Amendment of the Federal Constitution; alleged danger of irreparable injury; and sought both a preliminary and a permanent injunction. The several state officials charged with the duty of enforcing the statute were joined as defendants.

The case was heard by three judges under Section 266 of the Judicial Code. The court, holding that it had both federal and equity jurisdiction, granted a preliminary injunction, 11 F. Supp. 145; and later a permanent injunction, 20 F. Supp. 1019. The state officials appealed to this Court. The sole contention of Joseph Triner Corporation is that the statute violated the equal protection clause. The state officials insist that the provision of the statute is a reasonable regulation of the liquor traffic; and also, that since the adoption of the Twenty-first Amendment, the equal protection clause is not applicable to imported intoxicating liquor. As we are of opinion that the latter contention is sound, we shall not discuss whether the statutory provision is a reasonable regulation of the liquor traffic.

First. The statute clearly discriminates in favor of liquor processed within the State as against liquor completely processed elsewhere. For only that locally processed may be sold regardless of whether the brand has been registered. That, under the Amendment, discrimination against imported liquor is permissible although it is not an incident of reasonable regulation of the liquor traffic, was settled by *State Board of Equalization* v. *Young's Market Co.*, 299 U. S. 59, 62, 63. There, it was contended that, by reason of the discrimination involved, a statute imposing a $500 license fee for importing beer violated both the commerce clause and the equal protection clause. In sustaining its validity we said:

"The words used [in the Amendment] are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it [the State] prescribes. . . .

"The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed amendment. As we think the language of the Amendment is clear, we do not discuss these matters. . . .

"The claim that the statutory provisions and the regulations are void under the equal protection clause may be briefly disposed of.

A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth."

Second. Joseph Triner Corporation insists that the statute is unconstitutional because it permits unreasonable discrimination between imported brands. That is, the registered brands of other foreign manufacturers may be imported while its unregistered brands may not be, although "identical in kind, ingredient and quality". We are asked to limit the power conferred by the Amendment so that only those importations may be forbidden which, in the opinion of the Court, violate a reasonable regulation of the liquor traffic. To do so would, as stated in the *Young's Market* case, p. 62, "involve not a construction of the Amendment, but a rewriting of it."

Third. The fact that Joseph Triner Corporation had, when the statute was passed, a valid license and a stock of liquors in Minnesota imported under it, is immaterial. Independently of the Twenty-first Amendment, the State had power to terminate the license. *Mugler* v. *Kansas*, 123 U. S. 623; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226, 228.

Reversed.

Mr. Justice REED concurs in the result.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.